IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 5, 2007 Session

PAUL RAY SEATON, ET AL. v. RICHARD ROWE, ET AL.

Appeal from the Chancery Court for Monroe County
No. 12,385 John B. Hagler, Judge

No. E2006-00575-COA-R3-CV - FILED MARCH 9, 2007

Carl and Zola Howell leased a 60 acre tract of land to Diversified Systems, Inc. and, because the land was landlocked, a 50-foot easement. The Howells later entered into an option agreement with Paul and John Seaton (the "Seatons"). The option agreement granted the Seatons a ten-year option to purchase over 581 acres of land. The option agreement excepted from the option to purchase the 60 acre tract of land then leased to Diversified Systems, Inc. The issue on appeal concerns whether, in the option agreement, the parties intended to exclude only the 60 acre tract of land, or the 60 acre tract plus the 50-foot easement tract. The Trial Court determined that the exclusion covered both the 60 acre tract and the 50-foot easement tract. We reverse the judgment of the Trial Court and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

William T. Alt, Chattanooga, Tennessee, for the Appellants, Paul Ray Seaton and John Nolan Seaton.

Joseph H. Crabtree, Jr., Sweetwater, Tennessee, for the Appellee, Richard Rowe, Individually and as Personal Representative of the Estate of Zola G. Howell, *et al.*

OPINION

Background

On July 11, 1985, Carl Howell and Zola Howell (the "Howells") leased a portion of their land located in Monroe County to Diversified Systems, Inc. Because the leased property was landlocked, the lease contained the following language:

> ALSO LEASED with the foregoing described tract is an easement for ingress and egress across a 50-foot wide right-of-way on grantor's lands from the point of beginning of said tract to the nearest public road.

On March 8, 1988, the Howells granted to Paul Seaton and John Seaton (the "Seatons") an option to purchase two tracts of land located in Monroe County. The two tracts comprised 581.5 acres. The option agreement provided that the term of the option was for ten years and the purchase price for the two tracts of land would be $200,000. The option agreement excepted from the option a portion of the second tract described as follows:

> It is the intent of the parties that the option granted hereon shall be on the property shown on Tax Map No. 25, Parcel No. 27, in the Tax Assessor's Office for Monroe County, Tennessee, exclusive of the sixty (60) acres excepted below.
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> * * *
>
> ALSO EXCEPTED from the above described property that portion of property leased by Carl R. Howell and wife, Zola G. Howell to Diversified Systems, Inc., a Tennessee corporation, which Lease Agreement was entered into on July 11, 1985, and which has not been recorded as of the date of execution of this agreement, a copy of which is attached hereto as an exhibit, and it further being understood by and between the parties hereto that said Lease Agreement includes approximately sixty (60) acres, more or less, all in accordance with the terms thereof.

In January of 1998, the Seatons notified the Howells' heirs[1] ("Defendants") of their intent to exercise the option. Defendants refused to sell the land, claiming the option agreement was unenforceable. This litigation began soon thereafter when the Seatons filed a lawsuit for specific performance seeking to enforce the option contract. Following a trial, the Trial Court held that the statute of frauds was not satisfied because the description of the 60 acre excepted property was

[1] By the time the Seatons decided to exercise the option to purchase the land, the Howells had passed away.

inadequate and parol evidence could not be used to remedy that deficiency. In short, the Trial Court determined that the language of the option agreement failed to identify where the excepted 60 acre tract of land was located. We reversed that conclusion on appeal, stating:

> Upon our review of the relevant authority, we find and hold that the trial court erred in determining that the option agreement in the instant case failed to adequately identify the property to be sold. The description of the property excepted from the option as "that portion of property leased by Carl R. Howell and wife, Zola G. Howell to Diversified Systems, Inc., ... which Lease Agreement was entered into on July 11, 1985," is an identification of a *particular* tract of land within the Howells' farm. This description could not "apply with equal exactness to any one of an indefinite number of tracts," *see Dobson*, 45 Tenn. at 620, as only one tract of land was subject to the July 11, 1985, lease between Diversified Systems and the Howells. Accordingly, we conclude that parol evidence is admissible "to show where the tract so mentioned is located." *See id*.
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> We recognize that any parol evidence introduced regarding the location of the property will contradict or vary the legal description of the property contained in the lease. Generally speaking, parol evidence that contradicts, varies, or alters a complete, valid, and unambiguous written contract is not admissible. *Harry J. Whelchel Co. v. Ripley Tractor Co.*, 900 S.W.2d 691, 692-93 (Tenn. Ct. App. 1995). However, parol evidence is admissible to vary, contradict, or alter a written contract term if fraud, accident, or mistake is shown. *McMillin v. Great Southern Corp.*, 63 Tenn. App. 732, 740, 480 S.W.2d 152, 155 (1972). It is undisputed that the legal description contained in the lease is unworkable; in the words of the trial court, "it describes nothing." However, the Howells and Diversified Systems operated under this lease for five years. Although the land was never used for its intended purpose, Diversified Systems made the required rent payments. Clearly, although their lease described "nothing," the parties acted as if the lease described "something." Indeed, it was not until years later, after the lease was discontinued, that the discrepancy in the legal description was discovered and a question arose as to which property was intended to be covered by the lease. Given these circumstances, it is logical to conclude that the wording of the description was the result of some accident or mistake. That being the case, parol evidence is admissible to vary the lease so that it may accurately describe the subject property.

Seaton v. Rowe, No. E2000-02304-COA-R3-CV, 2001 WL 987229, at * 4 (Tenn. Ct. App. Aug. 29, 2001), *perm. app. denied Feb. 19, 2002.*

On remand, the Trial Court determined, with the aid of parol evidence, that the option agreement was enforceable. However, a disagreement later arose as to whether the option agreement excluded not only the 60 acre tract of land but also the 50-foot easement tract "for ingress and egress … on grantor's lands from the point of beginning of said tract to the nearest public road", as contained in the lease agreement. Stated differently, the parties disagreed on whether the area excluded from the option agreement was the 60 acre tract of land plus the 50-foot easement tract to access that land, or just the 60 acre tract of land.

Following a hearing, the Trial Court issued a Memorandum Opinion resolving this issue as follows:

> The court asked counsel to brief the issues regarding the nature of the easement and whether it is a joint-use or an exclusive easement. Plaintiffs [i.e., the Seatons] contend that it is only a necessary easement for an otherwise land locked sixty acre tract and, as such, is limited by statute to a twenty-five foot joint-use easement. (T.C.A. §54-14-101 et seq). Defendants contend that it is either a fifty-foot wide fee or a fifty-foot wide easement, exclusive to them, as described in the option.
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> The Court holds, contrary to Plaintiffs' claim that it is a joint-use easement, that it is an expressly granted fifty-foot wide exclusive-use easement as described in the lease and excepted from the option.
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> * * *
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> Plaintiffs contend, essentially, that the option excepted only the land which the lessee "possessed" (the sixty acres 'more or less') and not that which the lessor had only a "right to use" (the easement).…
>
> The option excludes "that portion of property leased" which "portion" includes a tract and an easement…. (emphasis in original)

Following entry of the final judgment, the Seatons filed an appeal and raise one issue, which we quote:

> Did the trial court [err] in its interpretation of the option agreement that the intention of the parties was not only to exclude from the option the 60 acre tract then under a term lease, but that it also required plaintiffs to affirmatively subject a portion of the

> property being received under the option to an easement in favor of defendant[s] equivalent to a 50 foot, exclusive use, right-of-way previously granted by Mr. Howell to Diversified?

Discussion

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

As this Court explained in *Quebecor Printing Corp. v. L & B Mfg. Co.*, 209 S.W.3d 565 (Tenn. Ct. App. 2006):

> In resolving a dispute concerning contract interpretation, our task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contract language. *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 889-90 (Tenn. 2002)(citing *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999)). A determination of the intention of the parties "is generally treated as a question of law because the words of the contract are definite and undisputed, and in deciding the legal effect of the words, there is no genuine factual issue left for a jury to decide." *Planters Gin Co.*, 78 S.W.3d at 890 (citing 5 Joseph M. Perillo, *Corbin on Contracts*, § 24.30 (rev. ed. 1998)); *Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001)). The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern. *Planters Gin Co.*, 78 S.W.3d at 890. The parties' intent is presumed to be that specifically expressed in the body of the contract. "In other words, the object to be attained in construing a contract is to ascertain the meaning and intent of the parties as expressed in the language used and to give effect to such intent if it does not conflict with any rule of law, good morals, or public policy." *Id*. (quoting 17 Am.Jur.2d, *Contracts*, § 245).
>
> This Court's initial task in construing the [contract] … at issue, as was the Trial Court's, is to determine whether the language of the contract is ambiguous. *Planters Gin Co.*, 78 S.W.3d at 890. If the language is clear and unambiguous, the literal meaning of the language controls the outcome of the dispute. *Id*. A contract is

> ambiguous only when its meaning is uncertain and may *fairly* be understood in more than one way. *Id*. (emphasis added). If the contract is found to be ambiguous, we then apply established rules of construction to determine the intent of the parties. *Id*. Only if ambiguity remains after applying the pertinent rules of construction does the legal meaning of the contract become a question of fact. *Id*.

Quebecor, 209 S.W.3d at 578.

The option agreement makes no specific mention of the easement but does make specific reference to the 60 acre tract of land. More particularly, the option agreement excepted from the option the "sixty (60) acres excepted below", and then went on to describe the sixty acres as being that portion of the property leased by the Howells to Diversified Systems, Inc. and further stated that the "Lease Agreement includes approximately sixty (60) acres, more or less, all in accordance with the terms thereof." After reviewing the applicable language in the option agreement, we hold that the clear and unambiguous language of that document excludes only the 60 acre tract of land originally leased to Diversified and does not exclude the easement tract described in Diversified's lease because the easement tract of land is not included in the "sixty (60) acres, more or less...."

While disagreeing as to whether the option agreement excludes the 50-foot easement tract, the parties agree that if the option agreement does not exclude the 50-foot easement tract, then Defendants, because the 60 acre tract of land is landlocked, would be entitled to an easement in accordance with Tenn. Code Ann. §§ 54-14-101 and/or 54-14-102 (2004). These statutes provide, in relevant part, as follows:

> **54-14-101. Way of ingress and egress – Procedure for securing – Payment of Damages – Maintenance as private road - "County court" construed. –** (a)(1) When the lands of any person are surrounded or enclosed by the lands of any other person or persons who refuse to allow to such person a private road to pass to or from such person's lands, it is the duty of the county court, on petition of any person whose land is so surrounded, to appoint a jury of view, who shall, on oath, view the premises, and lay off and mark a road through the land of such person or persons refusing, as aforementioned, in such manner as to do the least possible injury to such persons, and report the same to the next session of the court, which court shall have power to grant an order to the petitioner to open such road, not exceeding twenty-five feet (25') wide, and keep the same in repair. If any person thereafter shuts up or obstructs the road, such person shall be liable for all the penalties to which any person is liable, by law, for obstructing public roads. The damage adjudged by the jury shall, in all cases, be paid by the person applying

for such order, together with the costs of summoning and impaneling the jury. Gates may be erected on the roads. In counties with a metropolitan form of government, the maximum permissible width for a road under this section shall not exceed fifteen feet (15').

(2) If the person petitioning for a private road needs additional land for the purpose of extending utility lines, including, but not limited to, electric, natural gas, water, sewage, telephone, or cable television, to the enclosed land, such person shall so request in the petition. Upon receipt of a petition requesting additional land for the extension of utility lines, the court may grant such petitioner's request and direct the jury of view to lay off and mark a road that is fifteen feet (15') wider than is permitted by the provisions of subdivision (a)(1).

* * *

(c) As used in this chapter, "county court" or "court" is deemed a reference to the entity in each county which has succeeded to the judicial functions of the former county court after 1978.

(d) Any petition or action under the provisions of this chapter shall be subject to title 29, chapter 16, and specifically § 29-16-102.

54-14-102. Condemnation to secure way if ingress and egress – Jurisdiction – Joinder of parties in action. – (a) Any person owning any lands, ingress or egress to and from which is cut off or obstructed entirely from a public road or highway by the intervening lands of another, or who has no adequate and convenient outlet from such lands to a public road in the state, by reason of the intervening lands of another, is given the right to have an easement or right-of-way condemned and set aside for the benefit of such lands over and across such intervening lands or property.

(b) The chancery and circuit courts and county courts, the latter acting by and through the county mayor, are given concurrent jurisdiction in such matters.…

Accordingly, we remand this case to the Trial Court for a determination of the easement to which defendants are entitled pursuant to the above statutory provisions.

Conclusion

The judgment of the Trial Court is reversed, and this cause is remanded to the Trial Court for further proceedings consistent with this opinion and for collection of the costs below. Costs on appeal are taxed to the Appellee Richard Rowe, Individually and as Personal Representative of the Estate of Zola G. Howell.

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D. MICHAEL SWINEY, JUDGE